IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1588 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LUHAR ASHOKBHAI NANJIBHAI PARMAR & 2 - Appellant(s)
Versus
BAVAJI RATILAL HARIDAS HEIR & L R OF BAVJI HARIDAS KALIDAS & 2 - Defendant(s)

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Appearance :

MR RAJNI H MEHTA for Appellant(s) : 1 - 2.
NOTICE UNSERVED for Defendant(s) : 1 – 3.
MR SB PARIKH for Defendant (s) : 4

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 29/01/2007

ORAL JUDGMENT

1. Mr. R.H. Mehta learned advocate for the appellants seeks permission to transpose appellant no. 3 – The New India Assurance Co. Ltd., as respondent no. 4.

Permission is granted. Mr. S.B. Parikh learned advocate states that he has instructions to appear for respondent no. 4 – insurance company and he will be filing his appearance during the course of the day.

1.1. Respondents are not served with the notice of this appeal as per the endorsement made in the record. These are very old appeals. It is very doubtful that even if fresh notices are issued to respondents they can be served. Further, after ascertaining the facts from Mr. R. H. Mehta learned advocate for the appellants, it appears that their presence is not required. Hence I have proceeded to hear the matter in their absence.

2. This is an appeal initially filed by the driver, owner and insurance company of the offending vehicle namely, motorcycle bearing registration no. GRI 575. However, by order dated 29th January, 2007, at the request of the learned advocate for the appellants appellant no. 3 – The New India Assurance Co. Ltd., is transposed as respondent no. 4 and now the appeal is prosecuted by the driver and the owner of the said vehicle. It may be noted here that appellant no. 1 driver and appellant no. 2 are one and the same person. He has been joined in his capacity as driver and owner of the vehicle. He has in

this appeal challenged the quantum of the compensation awarded to respondent no. 1 who is the son of the deceased by the judgment and award dated 29th June, 1985 by MACT [Main], Rajkot District at Rajkot in MACP No. 426 of 1983. Respondents no. 2 and 3 are the daughters of the deceased and sisters of respondent no.1. However, they are also the claimants, but at the outset by filing written statement at Exh. 26 and 27 they have declared that the entire award amount be paid to respondent no. 1 and they do not claim any compensation for the death of their father.

3. It is the case of the claimant that on 24th April, 1983 at about 8:45 a.m., the deceased was trying to cross the road. At that time, the offending vehicle motorcycle bearing registration GRI 575 knocked him down from the behind. As a result of the same, he sustained serious injuries and later on died. It is the say of the claimant that the motorcycle was driven in a rash and negligent manner and the accident occurred solely due to negligent act of appellant no. 1. The said vehicle at the relevant time was driven and owned by appellant no. 1 and insured with respondent no. 4. The claimant therefore, filed the aforesaid petition for claiming compensation at Rs. 1 lakh.

4. The claim was resisted by the appellant and respondent no. 4 by filing joint written statement at Exh. 23. They denied the averments made in the claim petition. According to him, there was no negligence on the part of the appellant. The appellant has stated that the appellant drove the vehicle at a moderate speed and that too on correct side of the road. It was the deceased who tried to cross the road all of a sudden from the front side of the stationery truck and in the process, his loin cloth got entangled in his feet and he fell down. According to him, the deceased had also contributed towards occurring of the accident. He, therefore, prayed that the petition be dismissed. Original opponents no. 4 and 5 who are the sisters and they have, as already stated above, filed written statement relinquishing the right to obtain any compensation in favour of respondent no. 1.

5. Before the Tribunal, the parties led evidence, oral as well as documentary. Respondent no. 1 gave evidence at Exh. 31. Though he was not the eye witness he has given the detailed account of the accident, but in the cross-examination he has admitted that he had not witnessed the accident. However, according to him the

motorcycle was driven at an excessive speed and in a rash and negligent manner. As a result of the same, the accident occurred and the deceased sustained fatal injuries.

6. He has examined one Gordhanbhai Khimabhai Kapadia at Exh. 38. He has stated that while the deceased was crossing the road to go to water hut, he was knocked down by the appellant who drove his motorcycle in a rash and negligent manner. In the cross-examination he has denied the suggestions that the motorcycle was driven at a moderate speed and that there was stationery vehicle on the left hand side of the road. He has also denied the suggestion that the deceased fell down on the road because his foot got entangled in the loin cloth.

7. The driver and the owner of the vehicle Ashokbhai Nanjibhai has examined himself at Exh, 42. According to him he drove the vehicle at a moderate speed. He also gave sufficient warning to the deceased by blowing horn. However, since the foot of the deceased got entangled in the loin cloth he fell down and dashed against his motorcycle. According to him, there was no negligence on his part. In the cross-examination, he has denied the suggestions that he drove the vehicle at an

excessive speed and that the foot of the deceased did not get entangled in his loin cloth.

8. The Tribunal has also considered the panchnama of the scene of occurrence as well as FIR lodged with Police in respect of the said accident which are at Exh. 37 and 36. I have perused the said discussion. It clearly appears that the accident occurred solely due to negligence of the appellant. The deceased had not contributed at all in the accident. Even the learned advocate for the appellants has not very seriously challenged this finding of the Tribunal. Hence, I am in total agreement with the finding given by the Tribunal on the count of negligence.

9. So far as the quantum of compensation is concerned, the Tribunal has considered the relevant factors for determining the just compensation. The detailed discussion is given in paragraphs 20 to 27. By considering the income and the age etc., of the deceased the Tribunal has assessed compensation at Rs.50,000=00. According to Mr. R. H. Mehta, this is on higher side. I have given my careful consideration to the elaborate discussion made by the Tribunal on this aspect. The deceased was aged about 10 years. The Tribunal has

applied the multiplier of 17. It has also assessed loss of dependency benefit at Rs.4,500=00 and has awarded Rs.45,000=00 towards the loss of dependency benefit. It has awarded Rs.5,000=00 for conventional amount of loss of expectation of life and Rs. 250=00 for after death expenses. May be that considering the age of the deceased the multiplier applied by the Tribunal can be said to be slightly on the higher side. That it is well within the permissible bracket and on that count no interference is required by this Court. It is also clarified that the original claimant would alone be entitled to receive the compensation as decided by the Tribunal.

9.1. The Tribunal has held the appellant and the insurance company i.e., respondent no. 4 jointly and severally liable to satisfy the award and that finding is also confirmed. The awarded amount has already been deposited by the insurance company as per the statement of Mr. R.H. Mehta. The Tribunal is, therefore, directed that if the amount is not withdrawn, it may summoned respondent no. 1 at the earliest and pay to him, after due verification, the entire amount together with interest accrued thereon by A/c., payee cheque.

10. In the result, the appeal is dismissed.

R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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